



YOUNG SHIRE COUNCIL

**DEBT RECOVERY
&
PROCEDURES
POLICY**

DATE ADOPTED:

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1.0 OBJECTIVES

- 1.1 To provide guidance to the General Manager and staff on appropriate debt recovery and write-off procedures to be undertaken to ensure effective control over Rates and Charges that become due and payable.
- 1.2 To recover monies owing to Council in a timely, efficient and effective manner in order to ensure effective cash flow management.
- 1.3 To fulfil the statutory requirements of both the Local Government Act, 1993 and Local Courts Act, 1970, with respect to the recovery of rates and other debts.
- 1.4 To ensure the integrity and confidentiality of all proceedings for both the Council and the debtor.

2.0 DEBT RECOVERY PROCEDURES FOR RATES AND CHARGES

2.1 The Rates Reminder Notice

A Rates Reminder Notice shall be issued for amounts of \$30.00 within 14 days after the due date of an instalment to all ratepayers.

- (a) Mutually suitable arrangements may be entered into with ratepayers requesting extensions to pay outstanding amounts.
- (b) The maximum period that Council will accept for payment by arrangements is 24 months.
- (c) The payment of debts by arrangements shall not remove the right of Council to recover current and future charges.
- (d) All requests for extensions or payment arrangements are to be made in writing or by completing Council's Application to pay by Regular Instalment form. Payments can be made either weekly, fortnightly, monthly or by other suitable arrangements.
- (e) If the arrangement is in arrears for a period of more than 14 days, and the debtor has not contacted Council to acknowledge and advise of circumstances that have caused the default in arrangements. Council will contact the debtor in writing advising that legal action may commence as a result of the default.

2.2 Proceeding with Legal Action

- (a) If Council receives no response from the debtor after the due date of the Reminder Notice or as a result of a defaulted payment arrangement notification Council may commence legal action.

- (b) If payment in full or an arrangement for payment has not been received by the due date stated on the 'Letter of Demand' then Council's external debt recovery agent may issue and serve a 'Statement of Claim'. The debtor may, within 28 days of the service of the Statement of Claim lodge a defence to the claim made by Council.
- (c) If the debtor does not respond to the Statement of Claim within 28 days, Council's external debt recovery agent may apply for 'Default Judgement'. The Default Judgement will be recorded against the debtors credit file by a credit reporting agency and may affect their capacity to obtain credit or to refinance in the future. The judgement is valid for 12 months.
- (d) After obtaining Default Judgement Council may recover the debt via any legal means available to it.
- (e) All legal expenses incurred by Council in the recovery of outstanding rates and charges may be charged against the debtor in accordance with the Local Courts Act 1970.

2.3 Proceeding with Legal Action (Local Government Act)

- (a) Pursuant to Section 712 of the Local Government Act, proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable.
- (b) All rates and charges payable by the same person, whether in respect of the same or of different land, may be recovered in a single action.
- (c) Section 605 of the Local Government Act 1993, allows Council to add to the amount of a rate or charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the rate or charge.
- (d) The Local Government Act 199 allows further options for Council to recover outstanding debts.
- (e) Section 569 allows Council the option to garnishee rent if the rateable property is let by the debtor to a tenant. A Notice must be served on the tenant under this Section before the garnishee can be attempted.
- (f) Where rates have remained unpaid for more than 5 years, Council may under Section 713(1) sell the property for unpaid rates.

2.4 Hardship Considerations

- (a) Applications for Hardship Rate Relief must be submitted to the General Manager on the appropriate form under the provisions of Council's Financial Hardship Policy. Each application will be considered on its merits. Such application must be submitted during the period of hardship and may not be considered retrospectively.

2.5 Interest

- 2.5.1 Interest accrues on a daily basis in accordance with Section 566 of the Local Government Act 1993 on rates and charges that remain unpaid

after they become due and payable. The rate of interest is that set by the Council which must not exceed the rate specified by the Minister for Local Government by notice published in the Government Gazette.

2.6 Sale of Land for Unpaid Rates and Charges

- 2.6.1 Where any rate or charge is overdue and has remained unpaid for more than five (5) years from the date on which it became payable, Council may proceed to sell the land in accordance with Division 5 of Part 2 of Chapter 17 of the Local Government Act, 1993.
- 2.6.2 Where any rate or charge is overdue in respect of vacant land and the amount overdue exceeds the Valuer General's current valuation of the property, Council may proceed to sell the land in accordance with Division 5 of Part 2 of Chapter 17 of the Local Government Act, 1993.
- 2.6.3 On an annual basis, a report shall be referred to Council for consideration listing all assessments to which the above two sections apply. The report will provide a detailed history of the circumstances of each case together with a recommendation in relation to the possible sale of the land to recover the overdue rates and charges.

2.7 Debt Recovery Procedures for Water

- (a) A reminder notice shall be issued within 14 days after the due date of the water and sewer usage account to all ratepayers. Reminder Notices will be issued for amounts over \$10.00 outstanding and will request payment within 14 days from the posting date of the notice.
- (b) Arrangements to pay off water charges will be the same as the procedures for the recovery of rates and charges. All arrangements to pay outstanding water accounts must be made with the owner of the property. No arrangement for payment may be made with a tenant of the property, unless they are the designated rate paying leasee.

2.8 Proceedings with Recovery Action

- (a) If council receives no response from the debtor by the due date of the reminder notice or, as a result of a defaulted payment arrangement notification council may commence legal action.
- (1) A 'letter of demand' will be issued to the ratepayer which will incur a late payment fee as per Council's adopted Operational and Management Plan. The issuing of the 'letter of demand' will give the ratepayer 14 days to respond.
- (2) Legal Action will commence for amounts greater than \$100.00 or where there is more than one quarterly account outstanding for water charges.
- (3) A further 'Letter of Demand' will be issued to the ratepayer from Council's external debt recovery agent giving the ratepayer 14 days to respond. If payment in full or an arrangement for payment has not been entered into by the due date stated on the 'letter of demand' then council's external debt recovery agent may issue and serve a 'statement of claim'. The debtor may,

within 28 days of the service of the statement of claim lodge a defence to the claim made by council.

- (b) If the debtor does not respond to the statement of claim within 28 days, council's external debt recovery agent may apply for 'default judgement'. The default judgement will be recorded against the debtors credit file by a credit reporting agency and may affect their capacity to obtain credit or to refinance in the future. The judgement is valid for 12 months.
- (c) After obtaining default judgement council may recover the debt by any means available to it.
- (d) All legal expenses incurred by council from the recovery of outstanding rates and charges may be charged against the debtor in accordance with the local courts act 1970.

3.0 General Debtors (Sundry Debtors)

Council may provide extended payment arrangements for Debtors of the following styles;

- (a) Kerb and Guttering Debtor
- (b) Footpaving Debtor

Or any other debtor when the debt is identified as a debt upon the property. Council does not provide extended payment arrangements for General debtors as such arrangements may constitute a interest free loan.

Where possible all private works should be prepaid to avoid creation of a debtor.

4.0 Debt Recovery Procedures for General/Sundry Debtors

- (a) All debtor account terms are strictly 14 days from the date of invoice.
- (b) Payment arrangements may be made for the payment of sundry debtor accounts if requested. These debts will be paid under a suitable arrangement for a maximum period of 6 months.
- (c) Monthly statements are to be forwarded to debtors. Outstanding amounts of more than 30 days are to be regarded as overdue.
- (d) Where amounts are outstanding for more than 60 days, credit will cease.
- (e) If Council does not receive payment within 14 days after the issue of the monthly statement and account is more than \$100.00 Council will send a 'Letter of Demand' to the debtor.
- (f) If Council does not receive payment within the 14 day period as stated on the 'Letter of Demand' legal action will be commenced. Legal action against a Sundry Debtors will follow the same procedures as stated in the document under Proceeding with Legal Action for rates.

- (g) All Council staff and Councillor sundry debtor accounts must be paid within 30 days of attracting a charge, any unsettled accounts shall have Council's Debt Recovery procedures applied forthwith.
- (h) This procedure may not apply to amounts due from Government Departments and such amounts shall be recovered by prompt action by council staff in requesting payment from the Government Department direct.

4.1 The Writing Off of Sundry Debtors

- (a) Section 610E allows Council to waive payment of, or reduce an approved fee other than rates and charges. This can be done if the case falls within the category of hardship or any other category in respect of which the Council has determined a category of cases under this Section until it has given public notice of the proposed category.
- (b) Council currently has the following categories in place to refund or waive fees.
- (c) The General Manager or delegated authority has the discretion to waive or reduce a fee under Section 610E:
 - Demonstrated financial hardship, or
 - Public benefit (eg. Charitable projects), or
 - As recompense for poor customer services or other error on the part of Council,
 - The circumstances of a particular case, where full fee payment would be unreasonable or inequitable.
- (d) A sundry debt above \$1,000.00 can only be written off in conjunction with Section 610E of the Local Government Act, by resolution of Council.
- (e) The General Manger may write off a sundry debt in conjunction with Section 610E if it is equal to or less than \$1,000.00
- (f) In accordance with Clause 20 of the Financial Management Regulation, a resolution or order writing off a debt must:
 - Specify the debtor's name;
 - Identify the account concerned; and
 - Specify the amount of the debt.
- (g) A written record is to be kept of all bad debts write offs.

5.0 Special Circumstances

- 5.1 Where special circumstances exist, the matter is to be referred to the General Manager for determination.

6.0 RESPONSIBILITY

- 6.1 Director of Corporate Services

7.0 REVIEW DATE

- 7.1 This policy is due for review every 4 years

Date Adopted: 21/03/2007
Date Adopted: 20/05/2009
Date Amended: 15/07/2015

Resolution No. 55/07
Resolution No. 122/09
Resolution No. 231/15